

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

NAEM WALLER,	:	
Petitioner	:	CIVIL ACTION
	:	No. 10-2029
v.	:	
	:	
DAVID VARANO, et. al.	:	
Respondent	:	

**ORDER**

**AND NOW**, this 8<sup>TH</sup> day of April, 2013, upon careful and independent consideration of the petition for writ of habeas corpus, the parties' briefs, United States Magistrate Judge L. Felipe Restrepo's Report and Recommendation, and Petitioner's Objections<sup>1</sup> to the Report and Recommendation, it is **ORDERED** that:

1. The Report and Recommendation is **APPROVED** and **ADOPTED**;
2. The petition for writ of habeas corpus is **DISMISSED** without an evidentiary hearing;
3. There is no basis for the issuance of a certificate of appealability.

s/Anita B. Brody

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ANITA B. BRODY, J.

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<sup>1</sup> Petitioner's reliance on *Lilly v. United States*, 527 U.S. 116 (1999) is unavailing, because that case involved out-of-court *testimonial* statements that were read into the record at the defendant's trial. Moreover, that case predated *Crawford v. Washington*, 541 U.S. 36 (2004) and *Davis v. Washington*, 547 U.S. 813 (2006), which detail the Court's current jurisprudence on the Confrontation Clause—and which hold that nontestimonial out-of-court statements do not implicate the Confrontation Clause.